



Board of Zoning Appeals
Jim Hrivnak Randy Duncan Janice Hitzeman Greg Short Ryan Brickner

MEETING MINUTES April 8, 2021

Chairman Jim Hrivnak called a Zoom (virtual) meeting of the Board of Zoning Appeals to order on Thursday, April 8, 2021 at 6:30 p.m. Members present included Jim Hrivnak, Randy Duncan, Janice Hitzeman; Gregory Short; and Ryan Brickner. Also, present were Claudia Husak, Planning Director; Elise Schellin, Development Planner; Karen J. Mitchell, City Clerk; Sandra D. Kin, Certified Senior Digital Reporter, US Court Support and interested parties.

OATH OF OFFICE FOR RE-APPOINTED & NEWLY APPOINTED MEMBERS

Karen J. Mitchell, City Clerk, administered the Oath of Office to re-appointed Board Member Greg Short.

STAFF ITEMS

There was none.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chairman Hrivnak opened the citizen participation session for items not included on the agenda. Hearing none, he closed the public comment session.

APPROVAL OF MINUTES

MOTION: Board Member Duncan moved to approve the minutes of March 18, 2021. Board Member Brickner seconded the motion.

VOTE: Y-5 N-0

APPLICATION FOR VARIANCE (Case 2021-07V)

Applicant: Michael & Aileen Joseph, Property Owners
Location: 8652 Rutherford Estates Court
Existing Zoning: (PR) Planned Residential District
Request: Review and approval of a variance to reduce the setback for the water surface of a swimming pool from a drainage easement from 12 feet to 2 feet in the rear of an existing property.

Claudia Husak, Planning Director confirmed that this meeting and the notice required are being held in accordance to the Charter.

Chairman Hrivnak administered the oath to Michael Joseph and Aileen Joseph.

Mr. Husak reviewed the Staff Report. ([Exhibit 1 - Staff Report](#))

Variance Standards:

1. **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property.** This proposal will yield a reasonable return and a benefit to the property particularly given that existing trees will not be removed with this proposed location.
2. **Whether the variance is substantial.** The location of the home and the shape of the lot limit the area for exterior amenities as sought by the homeowners.

3. **Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance.** Staff is not aware what the purpose of the 12-foot setback requirement is for pools from easements. Other outdoor amenities are permitted within 12 feet of easements. A visit to the site confirmed that the easement exists to allow for runoff from neighboring properties across the rear yard. Locating the pool within 2 feet from the easement will not interfere with accommodating the runoff.
4. **Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage).** There will be no disruption to these services.
5. **Whether the property owner purchased the property with knowledge of the zoning restriction.** The homeowners were not aware of the limitation for the proposed pool.
6. **Whether the property owner's predicament feasibly can be obviated through some method other than a variance.** While a pool is permitted in the neighborhood, this particular lot does not have adequate rear yard space for such an amenity without impacting existing trees or the existing patio. The applicant has received permission from the Homeowners Association for this proposal.
7. **Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.** The spirit and intent of the zoning requirement would be observed. The pool will not interfere with the drainage for this site or adjacent lots.

Mr. Joseph: We do not have any additional information to add. We believe Ms. Husak has done an excellent in presenting our case and agree with everything she said.

Chairman Hrivnak opened this item up to public comments. Hearing none, he closed the public comments portion.

Board Member Short: Will the easement be disturbed during construction, and if so, will it be repaired during the construction? Will the pool just go all the way up to that 2-foot easement or are you going to have a paver patio around it?

Mr. Joseph: We cannot put paver or anything in the easement, so that will just be grass. The patio will be on three sides of the pool with grass on the easement side.

Board Member Short: During construction will they be mindful of the easement in case of a large rainfall or something like that? The last thing we would want is a backup into your new pool and ruin your new pool because there is equipment in the easement and it is not able to drain.

Mr. Joseph: We are only 2 inches from the high point in the neighborhood, and it is only 20 feet into our neighbor's property so there is very little flow through that. However, it will not be a problem to maintain that space and not be disturbed during construction. All debris will be hauled out. Nothing should touch the easement through the construction process.

Chairman Hrivnak: The City Code requires a fence around the pool. I do not see that on the drawing. Where will it be? I am curious where it is relative to the drainage easement.

Mr. Joseph: The fence is going to be a removable pool fence that will be around the pool. We talked with Kevin Moran, your Senior Inspector, and he said it was an acceptable plan. I do not have the paperwork in front of me, but it is in the plan that we submitted to the Building Department. I did not submit fence drawing here because we were not asking for a variance for the fence. It surrounds the pool with a mesh liner that is code compliant.

Chairman Hrivnak: So it almost at the edge of the pool?

Mr. Joseph: That is correct.

Mrs. Joseph: We will surround the pool completely at the desired height.

Chairman Hrivnak: So it is within the footprint that we show on the drawing here?

Mr. Joseph: Yes. If we allow the drainage easement to be the south side, it follow the south side of the pool,

then goes north toward our house very close to the pool, and then across the backside of our house within 1 to 2 feet of the pool. I need to be able to secure the fence into concrete to withstand a 150lb person falling into it.

Chairman Hrivnak: Is there any landscaping plan on the drainage easement side of the pool?

Mr. Joseph: It will be grass only. There are existing trees there already, but we will not be adding anything additional to it.

Ms. Husak: The Joseph family has been very responsive to our requests and very good to work with so we appreciate applicants who help us out in doing our job well.

Mrs. Joseph: We appreciate you too Claudia. You have been amazing to work with.

Mr. Joseph: Claudia is a wonderful asset for the City of Powell. She has been wonderful.

MOTION: Board Member Short made a motion to approve the variance as submitted. Board Member Hitzeman seconded the motion.

VOTE: Y-5 N-0


OTHER COMMISSION BUSINESS

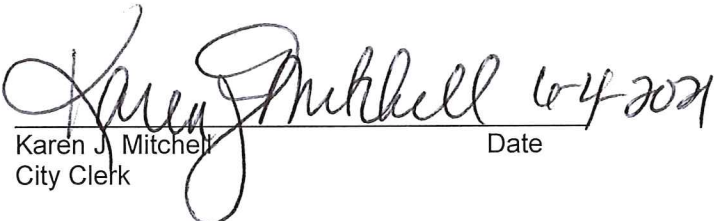
Ms. Husak asked the Committee to consider having a standing meeting date for future BZA meetings and recommended the first Thursday of the month. The Committee gave thumbs up to a standing meeting date on the first Thursday of each month on an as-needed basis.

ADJOURNMENT

MOTION: Board Member Duncan moved to adjourn the meeting at 6:58 p.m. Board Member Brickner seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned. The next meeting will be June 3.

DATE MINUTES APPROVED:


Jim Hrivnak
Chairman
6-3-21
Date


Karen J. Mitchell
City Clerk
6-4-2021
Date

